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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 91

JOHN F. WILLIAMS, PETITIONER

v.

LAURENCE B. ROBBINS, ADMINISTRATOR, RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The District Court rendered no opinion. The opinion of the Court of Appeals (R. 59) is reported at 210 F. 2d 874.

JURISDICTION

The judgment of the Court of Appeals affirming the order of the District Court was entered on February 25, 1954 (R. 62). A petition for rehearing was denied March 26, 1954 (R. 71). The petition for a writ of certiorari was filed on

May 25, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, in the circumstances of this case, petitioner's discharge from his employment with the Reconstruction Finance Corporation was in accordance with the procedural requirement of 5 U. S. C. 652 and Civil Service Regulation, Section 9.102, that a charge which is the basis for a removal from the civil service must be specific and detailed.

STATUTE AND REGULATION INVOLVED

5 U. S. C. 652:

> No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges, with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. * * *

5 C. F. R. 9.102 (a):

* * * * *

(1) *Actions Against Employees.*—No employee, veteran or nonveteran, shall be separated, suspended, or demoted except for such cause as will promote the efficiency of the service and for reasons given in writing. The agency shall notify the employee in writing of the action proposed to be taken. This notice shall set forth, specifically and in detail, the charges preferred against him. The employee shall be allowed a reasonable time for filing a written answer to such charges and furnishing affidavits in support of his answer. He shall not, however, be entitled to an examination of witnesses, nor shall any trial or hearing be required except in the discretion of the agency. If the employee answers the charges, his answer must be considered by the agency. Following consideration of the answer, the employee shall be furnished at the earliest practicable date with a written decision. If the agency determines that removal or other action is warranted, the employee shall be notified in the decision of the reasons for the action taken and its effective date. Copy of the charges, notice of hearing (if any), answer, reasons for removal, or other action, shall be made a part of the records of the department or agency concerned.

STATEMENT

Petitioner, a discharged employee of the Reconstruction Finance Corporation, brought suit

praying for a judicial determination that the charges upon which he was removed from office were not sufficiently detailed to meet the requirements of the Lloyd-LaFollette Act and of the applicable Civil Service regulations, and for an order requiring his reinstatement.

Petitioner was employed by Reconstruction Finance Corporation in 1933 and by 1948 had become a loan examiner, G. S. 15, in the classified Civil Service, a position which, according to petitioner's own summary of his job description, "required the handling of complex loan applications" and "involved an analysis of problems of more than average difficulty". (R. 2A–3A; 22A–23A; 61). In one thirty-day period, petitioner's regular work "consisted of servicing about twenty-five loans aggregating nearly $200,000,000.00" and the assignment to him of new loan applications aggregating about $75,000,000.00 (R. 21A–22A).

On October 26, 1951, petitioner was advised by letter that it would be necessary to terminate his employment at the close of business November 25, "if after consideration of your reply, it is deemed insufficient." Two reasons were given for this action (R. 5A, 6A):

> 1. You have interfered or attempted to interfere with officials of the Corporation by endeavoring to influence their judgment and recommendation with respect to loan applications under consideration.

> 2. In passing on particular loans, you have failed to consider all important and relevant data. This has led to actions on the part of the Corporation which have been severely criticized and has made it impossible to rely upon your judgment, findings and recommendations.

In a letter dated November 5, petitioner requested more details. In response, on November 15, petitioner was given a letter stating (R. 7A):

> The specific instances where you interfered or attempted to influence the judgment of others are Binkley Manufacturing Company, Warrenton, Missouri; Highway Trailers, Edgerton, Wisconsin; and Skybrook Farms, Inc., Henderson, South Carolina.
>
> The specific instances where you failed to consider all important and relevant data are Central Iron and Steel Company, Harrisburg, Pennsylvania, American Lithofold Corporation, St. Louis, Missouri and Kaiser-Frazer Corporation, Willow Run, Michigan.

As the court below found (R. 60), much had gone on inside the Reconstruction Finance Corporation prior to the sending of these letters, including interviews with petitioner, and conferences concerning "memoranda of explanation" he had submitted to his superiors. Thus, on June 11, 1951, petitioner had written an explanatory memorandum of two telephone calls which he had

placed in February 1950, to the St. Louis Agency of the Reconstruction Finance Corporation relative to the loan applications of Binkley Manufacturing Co. (R. 13A, 23A, 24A, 31A). In that memorandum, petitioner used phrases ("There was certainly no intention on my part to put pressure on the Agency * * *.") ("* * * maybe I was a little blunt in handling the matter. I shall try to be more diplomatic and tactful in the future.") (S. R. 16) which disclose why that memorandum had been requested. About this time, June 1951 (R. 55A), Mr. Paul Cotter, then Director of the Reconstruction Finance Corporation Office of Investigation, discussed petitioner's work with Administrator Symington (R. 50A, 51A), and thereafter Cotter launched an investigation of petitioner which lasted until September (R. 53A), in the course of which Cotter conversed with petitioner (R. 52A).

While this investigation was in progress, several other events, which are of cumulative importance, were occurring. On July 21, 1950, a year previous, petitioner had telephoned the manager of the Charlotte Agency, relative to the loan application of Skybrook Farms, Inc. (R. 14A, 23A). During the course of this telephone conversation a Congressman's name had been mentioned by petitioner; and the manager of the Agency stated that "[c]ertainly the fact that the call came from the Washington office and a Congressman's name was mentioned would indicate

the call was possibly intended to be of more than ordinary importance" (R. 32A–33A). This telephone call became the subject of a letter, dated March 9, 1951, from Mr. Devlin, Chief, Audit Division Field Office, to Mr. N. Royall, Assistant Controller (S. R. 25);[1] and also the impetus for a second reply memorandum dated August 20, 1951, from petitioner to one Ronan, petitioner's superior for the purpose of passing on loan applications. In that memorandum petitioner referred to the Devlin letter and stated "In no way was my recommendation predicated upon any influence brought by Congressmen or Senators" (S. R. 25–26). On August 17, 1951, petitioner sent a memorandum direct to Administrator Symington, without directing it through the usual channels (R. 26A, 52A).

On September 13, 1951, petitioner completed his testimony regarding certain loans by the Reconstruction Finance Corporation before a Senate Committee. That afternoon petitioner was called to the office of the Administrator, who told petitioner (according to petitioner's own affidavit) that he was "disappointed" in petitioner's performance. The Administrator asked him (according to petitioner) why he had volunteered information, had needlessly injected into the pro-

[1] The term "S. R." refers to the appendix to the brief of the RFC in the Court of Appeals which has been certified in accordance with petitioner's designation in the court below (R. 72).

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ceedings the name of a politically prominent individual unconnected with the Reconstruction Finance Corporation, and had testified that in similar circumstances he would again make the same recommendations regarding certain loan applications as he had made in the past (R. 28A–30A).

On September 17, 1951, the Manager of the Chicago Agency wrote the Washington office concerning a telephone conversation with petitioner which had taken place some months prior thereto (R. 24A) (S. R. 17). This conversation concerned the loan application of the Highway Trailer Company. This letter and the telephone conversation became the subject of a third reply memorandum, dated October 15, 1951, which petitioner wrote to his superior, Ronan (R. 13A–14A) (S. R. 17).

Petitioner's own affidavit declares that, having been told "for some time" by Ronan that his work was unsatisfactory (R. 25A), on September 26, 1951, he was called by Ronan to the latter's office and asked to resign. Ronan told petitioner that he was dissatisfied with his work and was "tired and worn out" from defending recommendations made by petitioner, which recommendations fifteen or twenty other examiners had previously refused to make. The loan applications of American Lithofold and Kaiser-Frazer were mentioned by Ronan. Though petitioner himself agreed he had "outlived [his] usefulness" to the Reconstruction Finance Corporation, he felt he could not

resign at that time because of attendant publicity, and refused to fix a date (R. 25A–27A).

The positions of Ronan and petitioner were subsequently affirmed in a conversation on October 3. Ronan then indicated that the Administrator agreed with his position (R. 28A), and terminated the conversation with the understanding that petitioner was to be "fired" as soon as the requested written notice was completed—which notice petitioner indicated he would expect to receive.

Some three weeks later petitioner received the letter containing the charges here involved and shortly thereafter the requested amplification of his charges. See pp. 4–5, *supra*. On November 20, petitioner replied, generally denying the charges and requesting more details, which request was denied in a letter dated November 23 (R. 7A–9A). Petitioner left his employment on November 25, and thereafter wrote two letters to, and received two written responses from, the Administrator (R. 9A–14A), the last of which contained a thorough summary of the justification for the termination of petitioner's employment (13A–14A).

On April 25, 1952, petitioner filed a complaint in the district court alleging in substance that he had been unlawfully discharged from his Government employment. The district court, on cross motions for summary judgment, granted respondent's motion and denied petitioner's motion. This

order was affirmed by the Court of Appeals in a *per curiam* opinion (R. 59–62), holding that there had been substantial compliance with the procedural requirements of the applicable statute and regulation, at least with respect to the second charge against petitioner.

ARGUMENT

1. Petitioner argues that he was not advised "specifically and in detail, [of] the charges preferred against him", as the regulation prescribes [5 C. F. R. 9.102 (a)]. The courts have consistently held that this requirement sets up the test whether the employee, on receipt of the written charges, was in possession of sufficient information to defend himself.[2] See, *e. g., Deak* v. *Pace,* 185 F. 2d 997 (C. A. D. C.); *Blackmar* v. *United States,* C. Cls. No. 170–52, decided April 6, 1954, slip op., p. 8; *Money* v. *Anderson,* 208 F. 2d 34 (C. A. D. C.). "It is this consideration which must be controlling and not necessarily the standards of a criminal indictment." *Blackmar* v. *United States, supra,* slip op. at p. 8.[3]

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[2] A number of the cases which we will discuss deal with the parallel section of the Veterans Preference Act of 1954, 5 U. S. C. 863. Because of the basic similarity of language no distinction will be made in the citations.

[3] The interpretation of 5 C. F. R. 9.102 (a) (1), as set forth in the Federal Procedural Manual, page 51, provides as follows: "Notice of Proposed Actions.—The reasons for the proposed action need not be formulated with the technical nicety required in an indictment, and the superior does not have to substantiate them by evidence. However, they

Under this standard the Court of Appeals was clearly correct in deciding that the circumstances of petitioner's dismissal demonstrate that at least the second charge [4] complied with the procedural requirement of specificity. Petitioner's work as loan examiner concededly involved a very high degree of responsibility and analytical ability, and the vast amounts of loans he investigated and administered required that his superiors have the highest confidence in his judgment and integrity. The determination that petitioner's actions on particular loans have "made it impossible to rely on your judgment, findings and recommendations" is obviously a delicate administrative decision, based upon review of petitioner's recommendations in highly complex situations. Where, as here, the import of the charge is clear, and the particular loans in which petitioner's judgment is questioned are specified, one can hardly demand a more detailed spelling out of the charge, as if it involved such simple mechanical or clerical errors as wrong dates or mispelled names. Cf. *Blackmar* v. *United States, supra.*[5]

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should be stated specifically enough, and clearly enough, that the alleged ground for the action may be clearly understood and that the employee may know the particular offense or offenses charged against him. * * *"

[4] That petitioner "failed to consider all important and relevant data" in three specific loan situations.

[5] There is an additional reason why petitioner is mistaken in his reliance (Pet. 12–13) on the invalidation by the Court

Indeed, it is apparent from the history of the case that, with respect to both charges, petitioner knew precisely the facts upon which his dismissal was based, and that the letter of dismissal was little more than a formal confirmation of previous discussions and consideration. These charges were by no means advanced suddenly nor did they take petitioner by surprise. As the Court of Appeals noted (R. 60), and as the record makes abundantly clear, "Much had gone on within the Corporation before the letter was written, appellant had been interviewed, specific cases had been called to his attention, conferences had been had with respect to his memoranda of explanation and otherwise." Thus, for example, the memoranda set forth in the supplemental record amply demonstrate that petitioner knew perfectly well the full details of the charge of "endeavoring to influence" his superiors. See *supra,* pp. 7–8. In short, the record plainly establishes that petitioner in fact received ample notice of the specific content of the charges against him in full com-

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of Claims, in the *Blackmar* case, of the charge that "Other awards approved by you consist of numerous errors as to dates, erroneous procedure, wrong names, and erroneous payments". The Court of Claims rested on the fact that a charge simply referring to "other awards" could not be sufficiently informative where the employee handled hundreds of cases during the period specified in the charge. Here, on the other hand, the charge referred to specific cases by name.

pliance with the procedural requirements of statute and regulation.[6]

2. Petitioner cites as in direct conflict with the decision below three cases decided by other panels of the same court. *Money* v. *Anderson,* 208 F. 2d 34; *Manning* v. *Stevens,* 208 F. 2d 827; *Deak* v. *Pace,* 185 F. 2d 997. But it is plain that in those cases the Court of Appeals followed the same test which it applied in the opinion below: whether, *in the circumstances of the particular case,* the charges are specific enough to provide a "fair opportunity for refutation * * *." See *Money* v. *Anderson, supra* at 38. The *Deak* opinion flatly refuses to "attempt to lay down any general rule applicable to the statute" (185 F. 2d at 998) and repeats several times the concern of the court with the particular circumstances of the case before it. "What may satisfy the statutory requirement for full information in the circumstances of one case may be wholly irrelevant to the circumstances of other cases. We confine ourselves, as we think the situation requires, to the

[6] The guilt or innocence of petitioner is, of course, not at issue. "The line of cases in which this court has said that courts will not review the action of executive officials in dismissing executive employees, except to insure compliance with statutory requirements, is unvaried". *Bailey* v. *Richardson,* 182 F. 2d 46, 64 (C. A. D. C.), affirmed by an equally divided Court, 341 U. S. 918. See also, *Carter* v. *Forrestal,* 175 F. 2d 364 (C. A. D. C.), certiorari denied, 338 U. S. 832.

facts of the present case * * * " *Ibid.* The opinion ends: "we conclude that in the circumstances of these cases appellants were entitled to the additional information * * *." *Id.* at 1,000. The same approach has been expressly adopted by the Court of Claims. See *Blackmar* v. *United States, supra,* slip op. at p. 8: "What might constitute full information in one case might be irrevelant to the circumstances of other cases." In the circumstances of this case, as we have shown, petitioner was undoubtedly afforded full information as to the charges against him.

3. Finally, petitioner complains of the fact that, having upheld the sufficiency of the second charge against him, the Court of Appeals found it unnecessary to pass on the sufficiency of the first charge. This omission, he claims, conflicts with the recent ruling of the Court of Claims in *Blackmar* v. *United States, supra,* and could have resulted in his removal on an insufficiently detailed charge, despite satisfactory rebuttal of the properly sufficient charge. But in so reasoning, petitioner completely ignores the fact that he made no attempt to disprove either charge. Petitioner had been advised by the letter of dismissal that he would be discharged unless he satisfactorily answered the charges against him. Not having attempted to answer them, petitioner is subject to removal if either one of the charges is sufficiently specific and independently consti-

tutes ground for removal. In the *Blackmar* case the discharged employee interposed answers to the charges against him, protesting *inter alia* that some charges were not sufficiently specific. The Court of Claims reversed the final administrative determination of dismissal, holding that from that particular record it could only conclude "that plaintiff's discharge was based, in part, on charges which did not meet the statutory requirements of specificity" (slip op. p. 11). In the instant case, since petitioner did not attempt to refute either charge, the problem of the *Blackmar* case does not arise. Moreover, there is no basis whatever in the present record for concluding that dismissal would not have been ordered on the second charge alone.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WARREN E. BURGER,
Assistant Attorney General.
PAUL A. SWEENEY,
ROBERT S. GREEN,
Attorneys.

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